

premises when nothing to the contrary appeared, and that the circumstance of the grantee's taking a freehold was of itself enough to bar the action, and see *Randall v. Rigby*, 4 M. & W. 133. But the existence of an absolute covenant in such a case would make a difference, see *Varley v. Leigh*, 2 Exch. 446: indeed the Court were there disposed to hold that the abolition of real remedies made the action maintainable.

VI. VII. **Distress within six months after end of lease.**—Rent is not due until the last minute of the day on which it is reserved payable,¹⁰ and hence, at common law, the landlord, not being able to distrain for it until the day after, was too late when the term determined; see *Duppa v. Mayo*, 1 Wms. Saund. 288; *Pool v. Longueville*, 2 Wms. Saund. 284 d. *in notis*.

To bring his distress within these sections, the landlord's interest must be subsisting at the time the distress is made, and therefore if a tenant underlet and his own term expires, he cannot distrain upon his under-tenant, *Burne v. Richardson*, 4 Taunt. 720, but in this case he would not be liable, as it seems, for mesne profits where his under-tenant continued in possession after the term; see Stat. 32 H. 8, c. 37 *supra*, as to distress by the representatives of the landlord.

The proviso as to the possession of the tenant¹¹ extends to his personal representative continuing in possession, on whom the landlord may distrain for arrears incurred in the life time of the deceased, *Braithwaite* **688** *v. Cooksey*, 1 H. Black. 465. There *the tenancy did not expire with his death. But where A., tenant *at will* at a yearly rent, died leaving rent in arrear, and the landlord distrained the next day on the premises which were then occupied by A.'s servant, and on the day after his widow came into occupation and afterwards took out administration, it was held that the distress was not justified under these sections, *Turner v. Barnes*, 2 Best & S. 435. Indeed *Crompton J.* observed, that the recital, that tenants *per auter vie*, &c., frequently hold over, &c., seems to show that a tenancy for the life of the tenant himself was not within the Statute, and this, coupled with the requisition that the distress must be made during the possession of the tenant, &c., makes it clear that the Act did not contemplate any case where the tenancy was determined by the death of the tenant. This possession of the tenant need not be of the whole, nor need it be a tortious holding, *Nuttall v. Staunton*, 4 B. & C. 51, where the tenant by permission of the landlord remained in possession of part of the lands after his tenancy had expired, and it was determined that the landlord might distrain on that part, within the six months.¹² But a holding

¹⁰ And, in the absence of some provision to the contrary in the lease, rent is not due until the end of the term. *Castleman v. Du Val*, 89 Md. 657.

¹¹ The right of distress after the end of the tenancy given by section 6 is subject to the limitation in section 7 that the distress must be levied during the possession of the tenant, either at will or at sufferance, and his goods may be distrained as long as he is in actual possession, whether wrongful or rightful, but not otherwise. *Gray v. Stait*, 11 Q. B. D. 668.

¹² But where the tenant remains in possession of part of the demised premises under a new tenancy created by agreement made before the